

AN ACT

ENTITLED, An Act to condition certification of nonparticipating manufacturers selling tobacco products upon provision of consent to be sued in state courts for enforcement of tobacco statutes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 10-50-73 be amended to read as follows:

10-50-73. Any tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries shall execute and deliver a certification that, as of the date certified, the tobacco product manufacturer is either a participating manufacturer or is in full compliance with chapter 10-50B. The certification shall be made on a form prescribed by the secretary and delivered to the secretary no later than the thirtieth day of April of each year. A participating manufacturer shall include in its certification a list of its brand families. A nonparticipating manufacturer shall include in its certification:

- (1) A complete list of all of its brand families that separately lists brand families of cigarettes and the units sold for each brand family in the state during the preceding calendar year, indicating by an asterisk any brand family sold in the state during that year that is no longer being sold in the state as of the date of the certification, and identification by name and address of any other manufacturer of listed brand families in that year and the current calendar year, and all of its brand families that have been sold in the state at any time during the current calendar year;
- (2) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by § 10-50-83;
- (3) That the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund, and has executed a qualified escrow agreement governing the

qualified escrow fund that has been reviewed and approved by the attorney general;

- (4) That the nonparticipating manufacturer is in full compliance with chapter 10-50B, §§ 10-50-72 to 10-50-92, inclusive, and any rules promulgated pursuant thereto;
- (5) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund, the account number of the qualified escrow fund and sub-account number for the state, the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date, and amount of each deposit, the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund, or from any other qualified escrow fund into which it ever made escrow payments, and such evidence or verification as may be deemed necessary by the secretary to confirm the foregoing; and
- (6) That the nonparticipating manufacturer consents to be sued in the circuit courts of the state for purposes of the secretary enforcing any provision of chapter 10-50B, §§ 10-50-72 to 10-50-92, inclusive, and any rules promulgated pursuant thereto. The consent to suit shall be demonstrated by the execution and submission of a consent to suit form prepared by the attorney general, with proof of authority to consent and execute the form.

An Act to condition certification of nonparticipating manufacturers selling tobacco products upon provision of consent to be sued in state courts for enforcement of tobacco statutes.

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I certify that the attached Act
originated in the

SENATE as Bill No. 24

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 24
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State